

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Biennial Review – Amendment of
Parts 0, 1, 13, 22, 24, 26, 27, 80,
87, 90, 95, 97 and 101 of the Commission's Rules
to Facilitate the Development and Use of the
Universal Licensing System in the Wireless
Telecommunications Services

WT Docket No. 98-20

To: The Commission

COMMENTS OF UTC

Pursuant to Section 1.415 of the Federal Communications Commission's (Commission) Rules, UTC, The Telecommunications Association (UTC), hereby submits its reply comments in response to the Commission's *Notice of Proposed Rule Making (NPRM)* in the above-referenced docket. UTC supports the implementation of a Universal Licensing System (ULS) for wireless services, but recommends minor modifications to the proposed rules to further streamline the licensing process.

I. Introduction

UTC is the national representative on communications matters for the nation's electric, gas, water and steam utilities, and natural gas pipelines; UTC also represents other organizations that use communications to support essential public service obligations. UTC's members range in

size from large combination electric-gas-water utilities which serve millions of customers, to smaller, rural electric cooperatives and water districts which serve only a few thousand customers each. Serving on UTC's Board of Directors are representatives from the following associations:

- American Gas Association
- American Public Power Association
- American Water Works Association
- Association of Edison Illuminating Companies
- Edison Electric Institute
- Interstate Natural Gas Association of America
- National Rural Electric Cooperative Association

UTC serves as the FCC's authorized frequency coordinator for the Power Radio Service frequencies in the private land mobile radio (PLMR) bands below 800 MHz. In this role, UTC assists the FCC in licensing private communications systems and has a great deal of experience with the FCC's existing licensing rules and methodology. UTC is pleased to have this opportunity to respond to the proposed ULS rules.

II. Comments

UTC supports the implementation of ULS by the FCC and limits its comments to modifications that would further streamline the FCC's licensing process, eliminate unnecessary rules and reduce the burden on applicants.

A. The Electronic Filing of Applications Should be Phased-In To Minimize Any Disruption to the Licensing Process

Because of the significant educational process that will be required to inform potentially millions of private wireless licensees of the ULS and its use, UTC recommends that paper

applications continue to be accepted for a sufficient transition period, at least in the private wireless services (Part 90 and Part 101). It will also take some time to “prove out” the ULS when handling a high volume of transactions.

Although frequency coordinators can greatly assist in serving as the interface between private wireless applicants and the ULS, there are many authorizations or notifications that do not necessarily need to be processed by a frequency coordinator. If applicants are compelled to file electronically, and are not comfortable with this process, it will result in: (1) increased reliance on frequency coordinators to process what should be “routine” filings; or (2) some required notifications not being made.

UTC therefore urges the FCC to err on the conservative side and allow a generous transition period (e.g., 2 years) for the submission of either electronic or paper applications. One could expect that as the benefits of electronic filing are demonstrated through higher speeds of processing or ease of use, that more users will voluntarily use electronic filing ahead of any mandatory cut-over dates.

B. FCC Should Promote Access to the ULS by Eliminating the Research Fee and by Permitting Internet Access

UTC urges the FCC to eliminate, or greatly reduce, the costs to access the ULS for “research” purposes. If ULS is to become a practical method for spectrum users to review their licensing records, or the records of other licensees to prepare interference and coordination studies, the FCC should facilitate access to the system by eliminating, or greatly reducing the

per-minute fees, which are currently set at \$2.30 per minute.¹

Another important way in which the FCC could facilitate access to the ULS would be to make the ULS available on the Internet itself. The FCC's proposal to restrict ULS to a dial-in process using Internet browsing software ignores the fact that Internet access is becoming pervasive throughout the country, and offers an inexpensive and easy method for accessing databases and transmitting information. In some corporate networks, computer terminals are not readily configured for dial-up access, even though employees have direct Internet connections.²

The Internet is fast becoming a trusted form of communication. To the extent security of ULS is a concern, it is difficult to believe that the nature of the information available through the ULS would require use of a dedicated network, and that adequate protection could not be provided using traditional means of e-commerce security.

C. Applicants Should Be Required to Supply Ownership Information Only to Ensure Compliance with Existing Ownership Restrictions

In the proposed ULS rules, the Commission seeks comment on whether it should use ULS to collect ownership information from applicants and licensees in non-auctionable services beyond what is currently required.³ According to the FCC, licensees in private, non-auctionable services may also hold licenses in auctionable wireless services, and this may raise competitive or spectrum management issues justifying the collection of ownership information.

¹ *NPRM* at ¶5 n.5.

² Additional problems would arise if the FCC ever uses a "900" number for accessing the ULS as many PBX systems are programmed to block access to 900 numbers.

³ *NPRM* at ¶48.

Basing licensing rules on speculation as to the possible need for information to satisfy some unidentified requirement some time in the future is inappropriate and contrary to the FCC's stated goals in this proceeding. Instead of eliminating unnecessary regulations, the extension of ownership information filing requirements to applications for private non-auctionable spectrum adds a licensing requirement without a demonstrated need. The FCC provides no information as to what types of ownership restrictions would apply to these non-auctionable licenses or what public policy would be served by these restrictions.

Requiring applicants for non-auctionable services to supply ownership information also runs contrary to the provisions of the Paperwork Reduction Act of 1995.⁴ This statute requires all Federal agencies, including the FCC, to examine paperwork requirements to minimize the burden resulting from the collection of information by the government. The FCC recognizes this goal and specifically seeks comment on whether its proposed of information collection is "necessary for the proper performance of the functions of the Commission, including whether the information shall have a practical utility."⁵ The collection of information regarding the ownership by non-auctionable services is neither necessary to the proper functions of the FCC, nor does it have a practical utility. There is simply no existing or pending regulation that would require the extension of the ownership information collection to these entities.

⁴ 44 USC §§ 3501-3520.

⁵ *NPRM* at ¶ 101.

Moreover, UTC can foresee no concerns regarding the use of private spectrum that would justify the extension of existing ownership information submission rules.⁶ Such spectrum is not subject to the commercial mobile radio service spectrum cap,⁷ the cellular cross-ownership restrictions⁸ or “small business” auction rules.⁹ To the extent that foreign ownership restrictions apply,¹⁰ a less burdensome and more streamlined approach would permit an applicant to certify that its application complies with the FCC’s rules regarding foreign ownership.

D. The FCC’s Regulatory Fee Filing Requirements Must Be Clarified

The implementation of the ULS rules raises certain questions regarding the application of the FCC’s licensing fee requirements in a post-ULS environment. While UTC understands that the FCC’s Office of Managing Director (OMD) will address fee issues in conjunction with its periodic review of fees,¹¹ UTC urges the FCC to consider adopting further protections for licensees against errors by the FCC’s authorized fee collection agent, Mellon Bank, that may affect the processing of applications. In one instance, a UTC member had a series of applications returned due to an error by the bank that caused the FCC not to receive the regulatory fee within ten days of the application. The FCC must consider enacting safeguards against this type of situation occurring under ULS by requiring that the bank notify the licensees of fee-related problems within set period of time (for example, three days) that would give the licensee

⁶ The FCC does require Part 101 microwave applicants to certify that they are not representatives of foreign governments and to disclose real party in interest information. 47 CFR §§ 101.7(a), 101.19(a)(1).

⁷ 47 CFR § 20.6.

⁸ 47 CFR § 22.942.

⁹ 47 CFR § 24.709.

¹⁰ See 47 CFR 101.7(a).

¹¹ *NPRM* at ¶ 18.

adequate opportunity to correct these problems. Without such clarification, the FCC's efforts to streamline the licensing process might be frustrated by minor errors made in the submission of fees.¹²

E. Conditional Licensing Should Be Permitted for Multiple Address Systems and 900 MHz Point-to-Point Microwave Systems

As an additional measure to streamline the FCC's rules, UTC recommends that conditional authorization under Section 101.31(b) of the FCC's Rules be available for MAS and 900 MHz point-to-point systems.¹³ Under Section 101.31(b), licenses for microwave systems in specific bands may begin operations prior to FCC authorization if certain conditions are met. This rule does not currently apply to MAS or 900 MHz point-to-point systems.

The extension of this conditional licensing authority is consistent with the FCC's proposals to reduce the administrative burdens on applicants and poses no threats to the operations of incumbent licensees or the processing of other applicants in these bands. In fact, under ULS, electronic access to the FCC's database will be available, which will provide applicants with better information on which to make frequency selection decisions and incumbent licensees with information regarding actual or potential sources of interference. In addition, the electronic filing of applications will mean that the FCC's database will be up-to-date on all filed applications, further reducing any possibility of problems associated with the conditional licensing of MAS or 900 MHz point-to-point systems.

¹² UTC anticipates that the FCC will modify its rules to encourage, if not require, the filing of fees electronically.

F. Applicants Must Have Adequate Time to Respond to FCC Notifications

UTC urges the FCC to ensure that its proposed rules setting the deadlines for responses to FCC notifications permit adequate time for applicant decision-making and action. For instance, in the *NPRM* the FCC proposes a uniform 30-day period for applicants to correct any errors discovered during application processing.¹⁴ Since some applicants may elect to continue receiving correspondence and notifications by regular mail, 30 days may be too short a time period, particularly if the response will require the applicant to secure a new or revised frequency coordination. UTC therefore recommends at least 45 days for applicants to respond to such notifications.

UTC also recommends that adequate time be provided for responses to construction notifications. While UTC supports the routine issuance of reminders to applicants concerning the need to complete station construction and the filing of a verification of construction, UTC recommends that these reminder notices be issued at least 60 days prior to the relevant construction deadline. A sixty-day notification period will provide sufficient time for a licensee to react to a construction notification by completing construction or by making a timely request for the extension of construction authority.

The electronic filing of fees may reduce the number of errors, and will permit the bank to assess problems earlier.

¹³ 47 CFR § 101.31(b)

¹⁴ *NPRM* at ¶ 53.

G. Technical Issues

1. Use of NAD-83

While UTC supports the more general use of North American Datum 83 (NAD 83) for specifying geographic coordinates, UTC is concerned that this be introduced in a manner that will minimize the potential for errors in the database. The FCC will have to clearly advise applicants and licensees of any conversions it intends to make to the database (which is presumably based on NAD27 coordinates), as well as recommendations on calculating or determining NAD 83 coordinates. Many engineering programs and topographical databases available commercially are based on 7.5 minute maps that are still NAD 27. Similarly, many individuals are now using handheld GPS units to take coordinates at tower sites, however without use of differential GPS, coordinates could be off by as much as 300 feet.

2. Radio Service Codes

When the FCC consolidated the Part 90 Radio Services into two pools (“Public Safety” and “Industrial/Business”), new applicants are assigned “radio service” codes corresponding to only these two pools. However, from the standpoint of good frequency coordination, as well as the regulatory requirements of Section 90.311 on access to channels in the 470-512 MHz band, it is critical that the FCC’s database continue to reflect the type of activity or business engaged in by each licensee. Simply knowing that a licensee is in the “Industrial/Business” service provides other applicants or frequency coordinators no way of knowing whether it would be in a position

to share use of its frequency with another nearby user. Understanding a licensee's radio service (e.g., whether it is a "Power" utility or a "Taxi" service) is vital to making good frequency sharing recommendations.

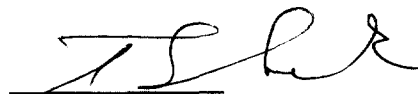
UTC therefore urges the FCC to continue collecting information from Part 90 applicants as to the former radio service categories, or at least comparable information, that would provide other applicants and coordinators with the information they need to make well-informed frequency recommendations pursuant to the requirements of Section 90.175.

WHEREFORE, THE PREMISES CONSIDERED, UTC requests the Federal Communications Commission to take action in accordance with the views expressed in these comments.

Respectfully submitted,

UTC, The Telecommunications Association

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